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February 13, 2008

## **VIA E-FILING**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**RE: *The Kansas City Southern Railway Company – Abandonment Petition for  
Exemption – Line in Warren County, MS,  
Docket No. AB-103 (Sub-No. 21X)***

Dear Acting Secretary Quinlan:

Enclosed please find the Reply To Petition To Reopen submitted on behalf of The Kansas City Southern Railway Company ("KCSR") in the above-captioned proceeding. KCSR will be submitting a Reply to the "Update Unauthorized Removal Of Bridge And Track Material" either later today or tomorrow morning.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by email: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Respectfully submitted,



William A. Mullins

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-103  
(SUB-NO. 21X)**

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**THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
- ABANDONMENT PETITION FOR EXEMPTION -  
LINE IN WARREN COUNTY, MS**

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**REPLY TO PETITION TO REOPEN**

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**Attorneys for The Kansas City  
Southern Railway Company**

**February 13, 2008**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-103  
(SUB-NO. 21X)**

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**THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
– ABANDONMENT PETITION FOR EXEMPTION –  
LINE IN WARREN COUNTY, MS**

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**REPLY TO PETITION TO REOPEN**

On January 25, 2008, Raymond B. English (“Mr. English”) and James Riffin (“Mr. Riffin”),<sup>1</sup> individuals and parties of record in the above-referenced proceeding, requested the Board to establish conditions and compensation under the Board’s offer of financial assistance (“OFA”) provisions at 49 CFR 1152.27(g)-(h) for their proposed acquisition of a rail line extending from milepost 225.6 to milepost 229.85 in Vicksburg, Warren County, MS (the “Line”). The Line is owned by The Kansas City Southern Railway Company (“KCSR”).<sup>2</sup> In their Joint Request, Petitioners argue that the Line possesses a negative net liquidation value (“NLV”), and they therefore apparently request that the Board order the conveyance of the entire

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<sup>1</sup> Messrs. English and Riffin will be referred to as “Petitioners.”

<sup>2</sup> Petitioners’ request to establish conditions and compensation filed in this proceeding on January 25, 2008, will be referred to as the “Joint Request.”

Line to Petitioners for \$0.<sup>3</sup> KCSR responded to the Joint Request on January 30, 2008, by supplying detailed evidence showing that the Line's NLV is \$504,615.<sup>4</sup>

On February 4, 2008, Petitioners filed a raft of pleadings with the Board, including, among others, a so-called motion to strike portions of KCSR's reply evidence and a supplement to the Joint Request ("Supplement"). By decision served February 6, the Director of the Office of Proceedings (1) accepted Petitioners' revised signature page; (2) rejected Petitioners' revised acreage and real estate value; (3) rejected the Verified Statement of Mr. Riffin; (4) rejected Petitioners' motion to strike in its entirety; (5) accepted the Supplement; and (6) directed KCSR to respond to the issues raised by Petitioners regarding Warren County's actions to remove a bridge.<sup>5</sup> In his decision, the Director correctly concluded that "Offerors' motion to strike is nothing but a thinly veiled reply to KCSR's reply." Moreover, the decision held, "[Offerors] dispute the qualifications of the railroad's witnesses, the evaluations made by those witnesses, and the arguments made by KCSR based on the evidence submitted by its witnesses. In its reply to the Request, KCSR has kept within the parameters of the case that Offerors filed in asking the Board to set the terms and conditions for the forced sale of the Line. It has submitted nothing that ought to be stricken." The Kansas City Southern Railway Company—Abandonment

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<sup>3</sup> Because of Petitioners' bifurcation argument and their vagueness about exactly what they would pay for the southern 2.35-mile section, it is difficult to tell exactly what Petitioners are asking the Board to set as the value, but at least for purposes hereof, KCSR believes that they are requesting a finding of an NLV of zero.

<sup>4</sup> KCSR has provided a detailed background of this proceeding at pages 3-6 of KCSR's January 30<sup>th</sup> "Reply to Request to Establish Conditions and Compensation for Financial Assistance," ("KCSR Reply") which KCSR incorporates herein by reference.

<sup>5</sup> KCSR responded to the Director's directive on February 8.

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Exemption—Line In Warren County, MS, STB Docket No. AB-103 (Sub-No. 21X) (served Feb.6, 2006, slip op. at 2).

On February 11, in another attempt to submit the already-rejected arguments and assertions about the merits of KCSR's valuation evidence and witnesses, Petitioners have filed a Petition To Reopen ("Petition"), allegedly pursuant to 49 CFR 1152.25(e)(4). As the Director properly did in his February 6 decision, the Board should reject and dismiss the Petition.

The Petition is procedurally improper inasmuch as 49 CFR 1152.25(e)(4) does not apply to the Director's February 6 decision. Moreover, Petitioners have not produced any new evidence or changed circumstances to warrant a reversal of the Director's decision nor have Petitioners shown that the Director's decision contained material error.

#### **ARGUMENT**

Petitioners have filed the Petition pursuant to 49 CFR 1152.25(e)(4). See Petition, ¶ 1. Subsection 1152.25(e)(4) allows a party to petition to reopen an "administratively final action of the Board." (emphasis supplied). The February 6 decision was a decision of the Director of the Office of Proceedings. It was not a final action of the Board because this type of Director's order is not "final action[] of the Board," as that term means, essentially, ripe for appeal to court. See generally 49 CFR 1115.6 (2005). Rather, provisions for appeals of Director's decisions in abandonment proceedings are permitted only in limited circumstances enumerated under 49 CFR 1152.25(e)(1). The Director's February 6 order is not one of those listed in 49 CFR 1152.25(e)(1). Accordingly, 49 CFR 1152.25(e)(4) is simply inapplicable to the procedural posture of this case and Petitioners' Petition is improper.

Even if 49 CFR 1152.25(e)(4) applied, it requires the Petition to state "in detail the respects in which the proceeding involves material error, new evidence, or changed

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circumstances.”<sup>6</sup> Petitioners make no effort to even address this standard. They provide no new evidence or changed circumstances occurring between the February 4 filing, the February 6 decision, and the filing of the February 11 decision. Petitioners also do not establish why it was “material error” for the Director to issue his decision and cite to no cases or precedent to establish why the Petition should be granted.

The Petition amounts to nothing more than a rehash of the previous arguments. See, e.g., Petition at ¶¶11-15. The Petition boils down to two basic arguments: (1) Mr. Riffin forgot to attach a verified statement so the Board should accept it now;<sup>7</sup> and (2) Mr. Riffin believes that KCSR’s January 30 reply contained, in Riffin’s view and with no independent corroboration, “redundant, irrelevant, immaterial, impertinent, or scandalous material” that should be stricken from the record, and the Director was wrong in not agreeing with Riffin’s assessment. Neither reason justifies overturning the Director’s decision, and both fall far short of the requirements of 49 CFR 1115.1(c) or 49 CFR 1011.6(b). In essence, the Petition simply is another effort by Petitioners to again put forth the same material which the Board has already determined, correctly, is improper.

Finally, to the extent that Petitioners contend in the Petition that KCSR’s argument supporting its valuation evidence contains false information with respect to whether there have been requests for service on the Line south of Foam Packaging, (a) KCSR continues to believe that no request for service sufficient to trigger the common carrier obligation under the Board’s recent rulings with respect to duties to quote rates was made; (b) that issue is not relevant to the

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<sup>6</sup> See generally Norfolk Southern Railway Company—Abandonment Exemption—In Norfolk And Virginia Beach, VA, STB Docket No. AB-290 (Sub-No. 293X), served Dec. 6, 2007, slip op. at 2.

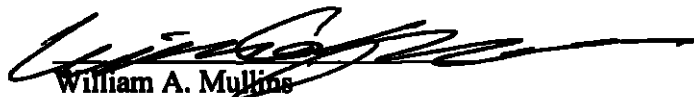
<sup>7</sup> KCSR sees no reference to a January 23 Riffin Verified Statement in the Joint Request.

valuation of the Line, which is the only question now at issue; and (c) these assertions of other requests for service are not new, having been raised (albeit initially in a manner so vague that it was impossible for KCSR to ascertain what was being alluded to or to gather any facts about it) in Mr. English's filings in which he did not oppose the abandonment. Accordingly, Petitioners' contentions on this subject as well fail to support granting the Petition.

The Petition should be denied in its entirety.

Respectfully submitted,

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Attorneys for The Kansas City Southern  
Railway Company

Dated: February 13, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing Reply To Petition To Reopen by mailing copies of the same via prepaid first class mail to all parties of record in these proceedings or by more expeditious means of delivery.

Dated at Washington, D.C. this 13<sup>th</sup> day of February, 2008.

  
William A. Mullins